

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District
Name <u>Robert Wade</u>	Prisoner No.	Case No. <u>04-12135 NG</u>
Place of Confinement <u>Old Colony Correctional Center</u> <u>One Administration Road</u> <u>Bridgewater MA 02324</u>		
Name of Petitioner (include name under which convicted) <u>Robert Wade</u>	Name of Respondent (authorized person having custody of petitioner) <u>v. Bernard F. Brady</u> MAGISTRATE JUDGE	
The Attorney General of the State of: <u>Massachusetts</u>		
PETITION		
1. Name and location of court which entered the judgment of conviction under attack <u>Supreme Judicial Court</u> <u>Boston, MA 02018</u>		
2. Date of judgment of conviction <u>September 2, 1997</u>		
3. Length of sentence <u>Life</u>		
4. Nature of offense involved (all counts) <u>felony murder</u>		
FILING FEE PAID: RECEIPT # <u>59182</u> AMOUNT \$ <u>3.00</u> BY DPTY CLK <u>[Signature]</u> DATE <u>10/8/04</u>		
5. What was your plea? (Check one) (a) Not guilty <input checked="" type="checkbox"/> (b) Guilty <input type="checkbox"/> (c) Nolo contendere <input type="checkbox"/> If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:		
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input checked="" type="checkbox"/> (b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

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9. If you did appeal, answer the following:

- (a) Name of court *Supreme Judicial Court*
- (b) Result *Affirmed*
- (c) Date of result and citation, if known *428 Mass. 147 (1998)*
- (d) Grounds raised *(1) Causation between act of defendant and death of victim; merger doctrine; (2) rape conviction duplicative*
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
 - (1) Name of court
 - (2) Result
 - (3) Date of result and citation, if known
 - (4) Grounds raised
- (f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:
 - (1) Name of court
 - (2) Result
 - (3) Date of result and citation, if known
 - (4) Grounds raised

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
 Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court *Plymouth Superior Court*
- (2) Nature of proceeding *Motion for a New Trial and for DNA Testing*
- (3) Grounds raised *(1) The court should have allowed DNA Testing at the Defendant's expense; and (2) ineffective assistance of counsel (See*

attached memorandum)

(3)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court

(2) Name of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐(2) Second petition, etc. Yes ☐ No ☐(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

See attached Memorandum

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one:

See attached

Supporting FACTS (state *briefly* without citing cases or law):

B. Ground two:

See attached

Supporting FACTS (state *briefly* without citing cases or law):

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C. Ground three: *See attached*

Supporting FACTS (state *briefly* without citing cases or law):

D. Ground four: *See attached*

Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

Kenneth Shine
Box 1615

(b) At arraignment and plea

Durham, MA 02331

12. Grounds of unlawful detention:

- A. The Defendant was denied access to completely exonerating evidence where the trial court denied his post-conviction Motion for DNA testing, which testing would have completely exonerated the Defendant and which testing the Defendant was prepared to pay for personally without requesting funding from the Commonwealth?
- B. The Defendant was denied his constitutional right to effective assistance of counsel where counsel failed to order DNA testing pre-trial?
- C. The Defendant was denied his constitutional right to effective assistance of counsel where counsel pursued a manifestly unreasonable theory of defense: that the alleged victim consented and that she had Alzheimer's disease, thereby effectively arguing to the jury that the victim was unable to consent, thus proving the Commonwealth's case and ensuring his client's conviction.
- D. The Defendant was denied his constitutional right to due process and to a fair trial where the trial court failed to instruct the jury that the victim's death from pneumonia following the incident must be the natural and probable consequence of the perpetrator's actions.

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(c) At trial

Kenneth Shure

(d) At sentencing

"

(e) On appeal

Ruth Grunberg
505 Paradise Road
Swampscott, MA 01907

(f) In any post-conviction proceeding

Janet Pumphrey
45 Walter Street
Lynn, MA 01240

(g) On appeal from any adverse ruling in a post-conviction proceeding

"

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.



Signature of Attorney (if any)

Janet Pumphrey

I declare under penalty of perjury that the foregoing is true and correct. Executed on

9/27/04
Date

Robert Wade
Signature of Petitioner